

Joseph N. Kravec, Jr. (*pro hac vice*)  
Maureen Davidson-Welling (*pro hac vice*)  
Wyatt A. Lison (*pro hac vice*)

**STEMBER FEINSTEIN DOYLE**

**PAYNE & KRAVEC, LLC**

429 Forbes Avenue, 17th Floor

Pittsburgh, PA 15219

Tel: (412) 281-8400

Fax: (412) 281-1007

Email: [jkravec@stemberfeinstein.com](mailto:jkravec@stemberfeinstein.com)

[mdavidsonwelling@stemberfeinstein.com](mailto:mdavidsonwelling@stemberfeinstein.com)

[wlison@stemberfeinstein.com](mailto:wlison@stemberfeinstein.com)

Nabil Majed Nachawati, II (*pro hac vice*)

**FEARS NACHAWATI LAW FIRM**

4925 Greenville Avenue, Suite 715

Dallas, TX 75206

214-890-0711

Fax: 214-890-0712

Email: [mn@fnlawfirm.com](mailto:mn@fnlawfirm.com)

**PLAINTIFF'S INTERIM CO-LEAD COUNSEL**

(Additional Counsel on Signature Page)

Carmine R. Zarlenga (D.C. Bar No. 286244)

**MAYER BROWN, LLP**

1999 K Street, N.W.

Washington, D.C. 20006-1101

Tel: (202) 263-3000

Fax: (202) 263-3300

Email: [czarlenga@mayerbrown.com](mailto:czarlenga@mayerbrown.com)

**ATTORNEYS FOR DEFENDANT**

Michael D. Braun (Bar No. 167416)

**BRAUN LAW GROUP, P.C.**

10680 W. Pico Blvd., Suite 280

Los Angeles, CA 90064

Phone: (310) 836-6000

Fax: (310) 836-6010

Email: [service@braunlawgroup.com](mailto:service@braunlawgroup.com)

Janet Lindner Spielberg

**LAW OFFICE OF JANET**

**LINDNER SPIELBERG**

12400 Wilshire Blvd., Suite 400

Los Angeles, CA 90025

Phone: (310) 392-8801

Fax: (310) 278-5938

Email: [jlsplberg@jlspl.com](mailto:jlsplberg@jlspl.com)

Dale J. Giali (Bar No. 150382)

**MAYER BROWN, LLP**

350 South Grand Avenue, 25th Floor

Los Angeles, CA 90071-1503

Tel: (213) 229-9500

Fax: (213) 625-0248

Email: [dgiali@mayerbrown.com](mailto:dgiali@mayerbrown.com)

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

**SKYE ASTIANA, PAMELA RUTLEDGE-  
MUHS and JAY WOOLWINE, on behalf of  
themselves and all others similarly situated,**

**Plaintiffs,**

**v.**

**DREYER'S GRAND ICE CREAM, INC.,**

**Defendant.**

**CASE NO.: 3:11-cv-02910-EMC  
Consolidated with CASE NO.: 3:11-cv-3164  
CLASS ACTION**

**~~[PROPOSED]~~ STIPULATED  
PROTECTIVE ORDER**

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of  
 3 confidential, proprietary, or private information for which special protection from public disclosure  
 4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
 5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
 6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures  
 7 or responses to discovery and that the protection it affords from public disclosure and use extends  
 8 only to the limited information or items that are entitled to confidential treatment under the  
 9 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that  
 10 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
 11 Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the  
 12 standards that will be applied when a party seeks permission from the court to file material under  
 13 seal.

14 **2. DEFINITIONS**

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
 16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
 18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
 19 Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
 21 as their support staff).

22 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY  
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

24 2.5 Designating Party: a Party or Non-Party that designates information or items that it  
 25 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
 26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

27 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium  
 28 or manner in which it is generated, stored, or maintained (including, among other things, testimony,

1 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
2 discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
4 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a  
5 consultant in this action, (2) is not a past or current employee of a Party, and (3) at the time of  
6 retention, is not anticipated to become an employee of a Party.

7 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:  
8 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or  
9 Non-Party would create a substantial risk of serious harm that could not be avoided by less  
10 restrictive means.

11 2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel  
12 does not include Outside Counsel of Record or any other outside counsel.

13 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal  
14 entity not named as a Party to this action.

15 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action  
16 but are retained to represent or advise a party to this action and have appeared in this action on  
17 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

18 2.12 Party: any party to this action, including all of its officers, directors, employees,  
19 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

20 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
21 Material in this action.

22 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
23 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
24 storing, or retrieving data in any form or medium) and their employees and subcontractors.

25 2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
26 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

27 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
28 Producing Party.

1     **3.     SCOPE**

2             The protections conferred by this Stipulation and Order cover not only Protected Material (as  
3 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
4 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
5 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
6 However, the protections conferred by this Stipulation and Order do not cover the following  
7 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
8 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
9 publication not involving a violation of this Order, including becoming part of the public record  
10 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
11 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
12 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
13 Protected Material at trial shall be governed by a separate agreement or order.

14     **4.     DURATION**

15             Even after final disposition of this litigation, the confidentiality obligations imposed by this  
16 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
17 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
18 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
19 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the  
20 time limits for filing any motions or applications for extension of time pursuant to applicable law.

21     **5.     DESIGNATING PROTECTED MATERIAL**

22             Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
23 Party that designates information or items for protection under this Order must take care to limit any  
24 such designation to specific material that qualifies under the appropriate standards. To the extent it is  
25 practical to do so, the Designating Party must designate for protection only those parts of material,  
26 documents, items, or oral or written communications that qualify – so that other portions of the  
27 material, documents, items, or communications for which protection is not warranted are not swept  
28 unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
2 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
3 encumber or retard the case development process or to impose unnecessary expenses and burdens on  
4 other parties) expose the Designating Party to sanctions.

5 If it comes to a Designating Party's attention that information or items that it designated for  
6 protection do not qualify for protection at all or do not qualify for the level of protection initially  
7 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the  
8 mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
10 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
11 Discovery Material that qualifies for protection under this Order must be clearly so designated  
12 before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
15 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the  
16 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to  
17 each page that contains protected material. If only a portion or portions of the material on a page  
18 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
19 by making appropriate markings in the margins) and must specify, for each portion, the level of  
20 protection being asserted.

21 A Party or Non-Party that makes original documents or materials available for inspection  
22 need not designate them for protection until after the inspecting Party has indicated which material it  
23 would like copied and produced. During the inspection and before the designation, all of the material  
24 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS'  
25 EYES ONLY." After the inspecting Party has identified the documents it wants copied and  
26 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
27 protection under this Order. Then, before producing the specified documents, the Producing Party  
28 must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –

ATTORNEYS' EYES ONLY") to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony and specify the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within the 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated "HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the  
2 expiration of that period, the transcript shall be treated only as actually designated.

3 (c) for information produced in some form other than documentary and for any other tangible  
4 items, that the Producing Party affix in a prominent place on the exterior of the container or  
5 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information  
7 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
8 portion(s) and specify the level of protection being asserted.

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
10 designate qualified information or items does not, standing alone, waive the Designating Party’s  
11 right to secure protection under this Order for such material.

12 In the event that any documents, material, or testimony that are subject to a  
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation  
14 is inadvertently produced without such designation, the Party that inadvertently produced the  
15 document shall give written notice of such inadvertent production within 21 days of discovery of the  
16 inadvertent production, together with a further copy of the subject document, material, or testimony  
17 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
18 ONLY” (the “Inadvertent Production Notice”). Upon receipt of such Inadvertent Production Notice,  
19 the Party that received the inadvertently produced document, material, or testimony shall promptly  
20 destroy the inadvertently produced document, material, or testimony and all copies thereof, or, at the  
21 expense of the Producing Party, return such together with all copies of such documents, material, or  
22 testimony to counsel for the Producing Party and shall retain only the “CONFIDENTIAL” or  
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designated documents, material, or  
24 testimony. Should the Receiving Party choose to destroy such inadvertently produced document,  
25 material, or testimony, the Receiving Party shall notify the Producing Party in writing of such  
26 destruction within 14 days of receipt of written notice of the inadvertent production. This provision  
27 is not intended to apply to any inadvertent production of any document, material, or testimony  
28 protected by attorney-client or work product privileges. In the event that this provision conflicts with



1 any applicable law regarding waiver of confidentiality through the inadvertent production of  
2 documents, material, or testimony, such law shall govern.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
7 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
8 confidentiality designation by electing not to mount a challenge promptly after the original  
9 designation is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
11 by providing written notice of each designation it is challenging and describing the basis for each  
12 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
13 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
14 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
15 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
16 are not sufficient) within 21 days of the date of service of notice. In conferring, the Challenging  
17 Party must explain the basis for its belief that the confidentiality designation was not proper and  
18 must give the Designating Party an opportunity to review the designated material, to reconsider the  
19 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
20 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
21 has engaged in this meet and confer process first or establishes that the Designating Party is  
22 unwilling to participate in the meet and confer process in a timely manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
24 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
25 Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)  
26 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the  
27 meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must  
28 be accompanied by a competent declaration affirming that the movant has complied with the meet



1 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
 2 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
 3 shall automatically waive the confidentiality designation for each challenged designation. In  
 4 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
 5 time if there is good cause for doing so, including a challenge to the designation of a deposition  
 6 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
 7 accompanied by a competent declaration affirming that the movant has complied with the meet and  
 8 confer requirements imposed by the preceding paragraph.

9 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 10 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
 11 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
 12 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to  
 13 retain confidentiality as described above, all parties shall continue to afford the material in question  
 14 the level of protection to which it is entitled under the Producing Party's designation until the court  
 15 rules on the challenge.

## 16 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
 18 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 19 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
 20 the categories of persons and under the conditions described in this Order. When the litigation has  
 21 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
 22 DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location and in a  
 24 secure manner that ensures that access is limited to the persons authorized under this Order.

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
 26 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
 27 information or item designated "CONFIDENTIAL" only to:  
 28

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

### 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for

1 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is  
2 attached hereto as Exhibit A;

3 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
4 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and  
5 (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been followed;

6 (c) the court and its personnel;

7 (d) court reporters and their staff, professional jury or trial consultants, and Professional  
8 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

10 (e) the author or recipient of a document containing the information or a custodian or other  
11 person who otherwise possessed or knew the information.

12 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –  
13 ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

14 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a  
15 Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has  
16 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
17 paragraph 7.3(b) first must make a written request to the Designating Party that (1) identifies the  
18 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information  
19 that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the  
20 Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s  
21 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity  
22 from whom the Expert has received compensation or funding for work in his or her areas of  
23 expertise or to whom the expert has provided professional services, including in connection with a  
24 litigation, at any time during the preceding five years,<sup>1</sup> and (6) identifies (by name and number of the  
25

26 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
27 party, then the Expert should provide whatever information the Expert believes can be disclosed  
28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert  
shall be available to meet and confer with the Designating Party regarding any such engagement.

case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 21 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within 14 days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

## **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY

CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must: (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order; (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.<sup>2</sup>

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

<sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1                   1. promptly notify in writing the Requesting Party and the Non-Party that some  
2 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

3                   2. promptly provide the Non-Party with a copy of the Stipulated Protective  
4 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the  
5 information requested; and

6                   3. make the information requested available for inspection by the Non-Party.

7           (c)     If the Non-Party fails to object or seek a protective order from this court within 14  
8 days of receiving the notice and accompanying information, the Receiving Party may produce the  
9 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
10 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
11 control that is subject to the confidentiality agreement with the Non-Party before a determination by  
12 the court.<sup>3</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of  
13 seeking protection in this court of its Protected Material.

#### 14     **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
16 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
17 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
18 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
19 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
20 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to  
21 Be Bound" that is attached hereto as Exhibit A.

#### 22     **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED** 23           **MATERIAL**

24           When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
25 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties  
26 \_\_\_\_\_

27     <sup>3</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
interests in this court.

are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

## **12. MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

## **13. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material.



As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: September 28, 2012

By: s/ Joseph N. Kravec, Jr.

JOSEPH N. KRAVEC, JR.  
 MAUREEN DAVIDSON-WELLING  
 WYATT A. LISON  
 MICHAEL D. BRAUN  
 JANET LINDNER SPIELBERG  
 DANIEL ROMAN TAMEZ  
 RONALD DEAN GRESHAM  
 JENNIFER WEBER JOHNSON  
 NABIL MAJED NACHAWATI, II  
 ROGER L. MANDEL

Attorneys for Plaintiffs  
 SKYE ASTIANA, PAMELA RUTLEDGE-MUHS and  
 JAY WOOLWINE

1 DATED: September 28, 2012

By: \_\_\_\_\_ s/ Dale J. Giali

2 DALE J. GIALI  
3 CARMINE R. ZARLENGA

4 Attorneys for Defendant  
5 DREYER'S GRAND ICE CREAM, INC.

6  
7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8  
9 DATED: October 1, 2012

  
\_\_\_\_\_  
10 EDWARD M. CHEN  
11 United States District Judge  
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
 understand the Stipulated Protective Order that was issued by the United States District Court for the  
 Northern District of California on [date] in the case of *Skye Astiana, Pamela Rutledge-Muhs and Jay*  
*Woolwine v. Dreyer's Grand Ice Cream, Inc.*, 3:11-cv-02910-EMC. I agree to comply with and to  
 be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
 solemnly promise that I will not disclose in any manner any information or item that is subject to this  
 Stipulated Protective Order to any person or entity except in strict compliance with the provisions of  
 this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone number] as  
 my California agent for service of process in connection with this action or any proceedings related  
 to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
 [printed name]

Signature: \_\_\_\_\_  
 [signature]